

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

2008 SEP 25 A 10:38

U.S. DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON, SC

**Gwendolyn Brown,**

Plaintiff,

vs.

Donald J. Cameron; James Heyward, Jr.;  
Melissa Barnes; Siemens Contractors; A/C Contractors (for  
housing); Clegg's Extermination; HUD Inc.

Defendants.

) C/A 2:08cv3011-CWH-BM

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) Report and Recommendation

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Plaintiff Gwendolyn Brown has filed a pro se Complaint under 28 U.S.C. §1983 based on the condition of the housing provided to her by the Housing Authority located in the City of Charleston. Plaintiff alleges that her family has been made ill by mold in her residence, and complains of the presence of vermin. While Plaintiff leaves blank the "Relief" portion of the Complaint, she appears to be seeking relief in the form of new housing.

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Complaint herein pursuant to the procedural provisions of 28 U.S.C. § 1915, and in light of the following precedents: *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); and *Gordon v. Leeke*, 574 F.2d 1147 (4<sup>th</sup> Cir. 1978). This Court is required to liberally construe *pro se* documents, *Estelle v. Gamble*, 429 U.S. 97 (1976), holding them to a less stringent standard than those drafted by attorneys, *Hughes v. Rowe*, 449 U.S. 9 (1980) (*per curiam*).

Even when considered under this less stringent standard, however, the *pro se* Complaint filed in this case is subject to summary dismissal. The requirement of liberal construction does not mean

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that the Court can ignore a clear failure in the pleadings to allege facts that set forth a federal claim, nor can the Court assume the existence of a genuine issue of material fact where none exists. *Weller v. Dept. of Social Services*, 901 F.2d 384 (4<sup>th</sup> Cir. 1990).

### Discussion

In order for this Court to hear and decide a case, the Court must, first, have jurisdiction over the subject matter of the litigation. Federal courts are courts of limited jurisdiction, “constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute;” *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4<sup>th</sup> Cir. 1998); and because federal courts have only limited subject matter jurisdiction, there is no presumption that the Court has jurisdiction. *Pinkley, Inc. v. City of Frederick*, 191 F.3d 394, 399 (4<sup>th</sup> Cir. 1999), 528 U.S. 1155 (2000) (citing *Lehigh Mining & Mfg. Co. v. Kelly*, 160 U.S. 337, 327 (1895)). Accordingly, a federal court is required, *sua sponte*, to determine if a valid basis for its jurisdiction exists, “and to dismiss the action if no such ground appears.” *Bulldog Trucking*, 147 F.3d at 352; *see also* Fed. R. Civ. P. 12(h)(3) (“Whenever it appears . . . that the court lacks jurisdiction of the subject matter, the court shall dismiss the action”).

A plaintiff must allege the facts essential to show jurisdiction in his or her pleadings. *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936)). *See also Dracos v. Hellenic Lines, Ltd.*, 762 F.2d 348, 350 (4<sup>th</sup> Cir. 1985) (“plaintiffs must affirmatively plead the jurisdiction of the court”). To this end, Fed. R. Civ. P. 8(a)(1) requires that a complaint provide “a short plain statement of the grounds upon which the court’s jurisdiction depends[.]” The federal court may also find that it has jurisdiction “if the facts supporting jurisdiction have been clearly pleaded.” *Pinkley* at 399 (citing 2 *Moore’s Federal Practice* § 8.03[3] (3d ed. 1997)). Nevertheless, if the court, viewing the

allegations in the light most favorable to the plaintiff, finds insufficient allegations in the pleadings, the court will lack subject matter jurisdiction. *Lovern v Edwards*, 190 F.3d 648, 654 (4<sup>th</sup> Cir. 1999). Here, the allegations of the Complaint provide no basis for either federal question jurisdiction under 28 U.S.C. § 1331 or diversity jurisdiction under 28 U.S.C. § 1332.

Upon review of Plaintiff's allegations, it is readily apparent that a resolution of Plaintiff's mold and vermin problems would be governed by state landlord tenant law and/or state contract law. The claims pose no federal question; thus, they cannot serve as the basis for federal jurisdiction. While Plaintiff may be attempting to set forth causes of action based in state law; if so, this Court would not have jurisdiction to hear them, because Federal courts are allowed to hear and decide state-law claims only in conjunction with federal-law claims, through the exercise of "supplemental jurisdiction." *Wisconsin Dep't of Corrections v. Schacht*, 524 U.S. 381, 387 (1998). Since Plaintiff has asserted no federal claims, this Court cannot exercise "supplemental" jurisdiction over Plaintiff's state claims, if any. *See Lovern*, 190 F.3d at 655 ("[T]he Constitution does not contemplate the federal judiciary deciding issues of state law among non-diverse litigants").

Alternatively, a civil action for any state claims would be cognizable in this Court under the diversity statute, if that statute's requirements are satisfied. *Cianbro Corp. v. Jeffcoat & Martin*, 804 F. Supp. 784, 788-791 (D.S.C. 1992). However, the diversity statute requires complete diversity of parties and an amount in controversy in excess of seventy-five thousand dollars (\$75,000.00). *See* 28 U.S.C. § 1332(a). Plaintiff has not requested monetary relief. Even if she had, this Court has no diversity jurisdiction of the case *sub judice* because Plaintiff and the Defendants are all citizens of the State of South Carolina. Complete diversity of parties in a case means that no party on one side may be a citizen of the same State as any party on the other side, and Plaintiff has made no allegation

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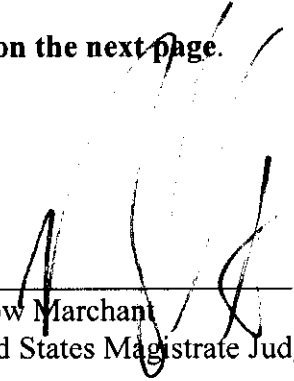
that any defendant is a citizen of a state other than South Carolina, much less an allegation of complete diversity. *See Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 372-374 (1978).

Although the absence of subject matter jurisdiction may be raised at any time during the case, determining jurisdiction at the outset of the litigation is the most efficient procedure. *Lovern v. Edwards*, 190 F.3d 654. As Plaintiff has not presented this Court with a basis for subject matter jurisdiction, her Complaint should be dismissed.

Recommendation

Accordingly, it is recommended that the Court dismiss the Complaint in this case without prejudice and without issuance and service of process. *See United Mine Workers v. Gibbs*, 383 U.S. 715 (1966); *see also Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972).

**Plaintiff's attention is directed to the important notice on the next page.**

  
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Bristow Marchant  
United States Magistrate Judge

September 24, 2008  
Charleston, SC

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
P. O. Box 835  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

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